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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 ERNESTO CASTENON,  
12 MARIA CASTENON, individuals,

Plaintiffs,

13 v.

14 CHAPEL MORTGAGE, et al.,

15 Defendants.  
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Case No. 10cv1702 BTM(POR)

**ORDER REMANDING CASE**

17 In an order filed on August 24, 2010, the Court ordered Defendants Bank of America  
18 Home Loans Servicing and Recontrust Company to show cause why this case should not  
19 be remanded for lack of removal jurisdiction. On September 8, 2010, Defendants filed their  
20 response to the OSC. The Court has reviewed Defendants' response and determines that  
21 it lacks removal jurisdiction over this action.

22 On August 13, 2010, Defendants removed this action from the Superior Court of  
23 California, County of San Diego, Vista Branch. Defendants contend that the Court has  
24 federal question jurisdiction over the action because the action is "founded on claims arising  
25 under federal laws, including the Real Estate Settlement Procedures Act ("RESPA"), 12  
26 U.S.C. §§ 2601 et seq.; and the Truth In Lending Act ("TILA"), 15 U.S.C. §§ 1601 et seq."  
27 (Notice of Removal ¶ 4.)

28 Under the "well-pleaded complaint" rule, federal-question jurisdiction extends over

1 “only those cases in which a well-pleaded complaint establishes either that federal law  
2 creates the cause of action or that the plaintiff’s right to relief necessarily depends on  
3 resolution of a substantial question of federal law.” Franchise Tax Bd. of California v.  
4 Construction Laborers Vacation Trust, 463 U.S. 1, 14 (1983). This rule makes a plaintiff the  
5 “master of his complaint” and allows him to “avoid federal jurisdiction by relying exclusively  
6 on state law.” Balcorta v. Twentieth Century-Fox Film Corp., 208 F.3d 1102, 1106 (9th Cir.  
7 2000).

8 An exception to the “well-pleaded complaint rule” is the “artful pleading” doctrine.  
9 Under this doctrine, “a plaintiff may not defeat removal by omitting to plead necessary federal  
10 questions in a complaint.” Franchise Tax Board, 463 U.S. at 22. Courts have applied the  
11 artful pleading doctrine in (1) complete preemption cases; and (2) substantial federal  
12 question cases. Lippitt v. Raymond James Fin. Serv., 340 F.3d 1033, 1041-42 (9th Cir.  
13 2003).

14 Although Plaintiffs’ Complaint asserts state law claims only, Defendants contend that  
15 Plaintiffs’ ninth cause of action for fraudulent concealment arises entirely under TILA and  
16 RESPA. Therefore, Defendants argue, Plaintiffs’ fraudulent concealment claim raises a  
17 substantial federal question. The Court disagrees.

18 When determining whether state claims implicate federal issues giving rise to federal  
19 question jurisdiction, the pertinent inquiry is, “[D]oes a state-law claim necessarily raise a  
20 stated federal issue, actually disputed and substantial, which a federal forum may entertain  
21 without disturbing any congressionally approved balance of federal and state judicial  
22 responsibilities.” Grable & Sons Metal Prod., Inc. v. Daure Eng’g & Mfg., 545 U.S. 308, 314  
23 (2005). “Federal issue” is not a “password opening federal courts to any state action  
24 embracing a point of federal law.” Id.

25 In cases where the violation of TILA and/or RESPA is one of several independent  
26 allegations supporting a claim of fraud or other state claim, courts have held that the state  
27 law claim does not necessarily turn on the federal issue. See, e.g., Ortega v. HomeEq  
28 Servicing, 2010 WL 383368, at \*6 (C.D. Cal. Jan 25, 2010) (holding that plaintiff’s fraud claim

1 – which alleged that defendants through misrepresentations, failure to disclose, and failure  
 2 to investigate induced plaintiff to enter into a loan – did not necessarily raise substantial and  
 3 disputed questions under TILA); Caampued v. First Federal Bank of California, 2010 WL  
 4 963080, at \*3-4 (N.D. Cal. Mar. 16, 2010) (explaining that plaintiffs’ fraud argument did not  
 5 necessarily require resolution of disputed issues of federal law because plaintiffs’ fraud claim  
 6 was not limited to any single misrepresentation, but, rather, alleged a scheme of  
 7 misrepresentations, deceit, and inducements); Myung v. Washington Mutual Bank, 2009 WL  
 8 4123467, at \*2 (C.D. Cal. Nov. 23, 2009) (holding that although state causes of action,  
 9 including breach of the covenant of good faith and fair dealing and fraud, alleged TILA and  
 10 RESPA violations, those violations formed only part of the basis for those causes of action,  
 11 and the complaint therefore did not present a substantial federal issue). In this case,  
 12 Plaintiffs allege that they were victims of a fraudulent scheme, whereby Defendants tricked  
 13 them into entering into a loan they could not afford. Plaintiffs allege that Defendants falsely  
 14 inflated Plaintiffs’ stated income on the loan application without telling them. (Compl. ¶¶ 8-  
 15 10.) Plaintiffs also allege that all of the loan documentation was in English even though  
 16 Plaintiffs’ primary language is Spanish and they do not read or write English. (Compl. ¶ 7.)

17 In Plaintiffs’ ninth cause of action, Plaintiffs allege that Defendants fraudulently  
 18 concealed the true cost of the loan by providing false Truth in Lending documents and  
 19 statements, and “failed to provide disclosures required by federal *and state law, including*  
 20 disclosures required under RESPA and TILA.” (Compl. ¶¶ 62-63) (emphasis added). The  
 21 ninth cause of action also incorporates by reference the preceding allegations of the  
 22 Complaint. In the first claim for relief, Plaintiffs alleges that Defendants concealed material  
 23 facts, including the facts that Defendants falsely inflated Plaintiffs’ stated income on the loan  
 24 application, that Plaintiffs would not have qualified for the loan based on their actual income,  
 25 and that Defendants placed Plaintiffs into a loan where it was reasonably foreseeable that  
 26 there was a high probability of default and failure. (Compl. ¶¶ 18-19.)

27 Although the fraudulent concealment claim alleges failure to provide disclosures under  
 28 RESPA and TILA, the claim is also premised upon the concealment of material facts in

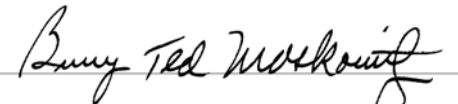
1 violation of state common law. The alleged fraudulent concealment goes beyond RESPA  
2 and TILA violations and encompasses an entire fraudulent scheme aimed at preventing  
3 Plaintiffs from learning that their income was falsely inflated and that they were entering into  
4 a loan they could not afford.

5 Because the alleged TILA and RESPA violations are not a necessary element of  
6 Plaintiffs' fraudulent concealment claim, the Complaint's references to the federal statutes  
7 do not convert the state claim into a federal cause of action. The Court does not have  
8 federal question jurisdiction over this action.

9 Accordingly, the Court **REMANDS** this case to the Superior Court of the State of  
10 California, County of San Diego, Vista Branch.

11 **IT IS SO ORDERED.**

12 DATED: October 4, 2010

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15 Honorable Barry Ted Moskowitz  
16 United States District Judge  
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